IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3905 OF 1996

1. Finolex Industries Limited, a company registered under the provisions of the Companies Act, 1956 and having its registered office at D-1/10, MIDC, Chinchwad, Pune - 411 019 and its PVC plant at Ranpar – Pawas Road, Ratnagiri -–415 612.

2. Mr. Chintaman Raghunath Abhyankar of Mumbai, Indian Inhabitant, having his office at 54/55/56, Mittal Court, A Wing, Nariman Point, Mumbai - 400 021. ... Petitioners

Vs.

1. State of Maharashtra

2. The Director of Legal Metrology, having his office at PCR-II, Division 7 Government Barrack, Free Press Journal Marg, Nariman Point, Mumbai - 400 021.

3. The Inspector of Legal Metrology, having his office at Palagar Manzil, Udyam Nagar, Ratnagiri.

4. The Controller, Weights & Measures, Department State of Maharashtra, having his office at Governhment Barraks, No.7, Free Press Journal Road, Mumbai - 400 021.

5. Union of India through its Advocate K.C. Sidhwa, having its office at Aikar Bhavan, Maharshi Karve Road, Mumbai - 400 020. ... Respondents

Mr. V.R. Dhond with Mr. Ashish Kamath i/b M/s. Craford Bayley & Co. for the

petitioners.

Mr. Vinay Sonpal, A.G.P. for the respondents.

CORAM : SMT. RANJANA DESAI & A.P. DESHPANDE, JJ.

DATED : 21ST JULY, 2006.

ORAL JUDGMENT:- (Per Smt. Ranjana Desai, J.)

1. Petitioner 1 is a company incorporated under the provisions of the Companies Act, 1956 and petitioner 2 is its Manager, Technical Sales. Respondent 2 is the Director of Legal Meterology appointed under section 28 of the Standards of Weights & Measures Act, 1976 (for short, "the Standards Act") and respondent 4 is the Controller of Legal Meterology to whom powers have been delegated under section 28 of the Standards Act.

2. The case of the petitioners as stated in the writ petition is as under :

The petitioners manufacture and sell Poly Vinyl Chloride (for convenience, "PVC"). The said PVC is manufactured by the petitioners in their PVC plant, which is located at Ratnagiri. The procedure adopted by the petitioners for packing and despatching the PVC manufactured by them at their factory is noted in the petition. According to the petitioners, the bagged material is palletized inside the bagging area and is then brought to the loading bay for despatch into trucks. Each pallet holds 80 bags. The stamping of the bags is undertaken after the material is lined up for despatch.

Depending upon whether the material is meant for export or for industrial use, the bags are stamped with the words “exports” or “for industrial use”. It is the petitioners' case that the PVC manufactured by them is either meant for export or for use as a raw-material for industry and that the same is not sold through retailers.

3. According to the petitioners on or about 29/11/1995, respondent 3 visited the petitioner's factory at Ratnagiri and seized 10861 bags of PVC. The said bags were seized by respondent 3 from the despatch section of the petitioners' factory. Out of 10861 bags seized, 10860 bags were seized and detained by respondent 3 in the despatch section of the petitioners' factory. The memo of seizure served on the petitioners states that petitioner 1 had contravened the provisions of section 33 of the Standards of Weights & Measures (Enforcement) Act, 1985 (for short, “the Enforcement Act”) and the provisions of the Standards of Weights and Measures (Packaged Commodities) Rules 1977 (for short, “the said Rules”).

4. According to the petitioners, the petitioners received a compounding notice dated 30/11/1995 relating to the said seizure. It was stated in the said notice that the said bags seized by respondent 3 did not conform to the provisions of the Enforcement Act and the said Rules and it constituted an offence under section 51 of the Enforcement Act. The petitioners thereafter corresponded with the respondents. The petitioners stated in their reply that the PVC manufactured by them was packed exclusively for use of industry as

a raw-material or for the purpose of servicing industry, mine or quarry and that it was exempted under Rule 34 of the said Rules. The petitioners, however, did not receive any reply and hence this petition. In short, the petitioners have challenged the action of the respondents in effecting the seizure of 10860 bags of PVC on 29/11/1995. The petitioners have, inter alia, prayed for a declaration that the provisions of the Standards Act and the said Rules do not apply to the PVC manufactured and sold by the petitioners. The petitioners have also prayed for quashing of the impugned actions, seizure memo and the compounding notice.

5. We have heard at some length Mr. Dhond, the learned counsel appearing for the petitioners. He contended that the PVC manufactured and sold by the petitioners is a raw-material meant for industrial use and as such it is exempted under Rule 34 of the said Rules. The learned counsel further contended that the PVC manufactured and sold by the petitioners is not meant for retail sale and is not sold through retail outlets. According to him, the petitioners either export the PVC manufactured by them or sell the same directly to the industrial users.

6. The learned counsel also contended that since the bags of PVC manufactured by the petitioners are either exported or sold to the industrial users in India, the appropriate stamp on the said bags stating that the said bags of PVC are meant for export or for industrial use are applied only after the same are ready for despatch. He submitted that at the time of

manufacture, the petitioners are not aware whether a particular bag of PVC will be sold to industrial users in India or whether it will be exported out of India. Therefore, if the said bags of PVC are seized before despatch, the same will necessarily not bear the requisite stamps. According to the learned counsel, all bags which are despatched by the petitioners always bear the relevant stamp. The learned counsel contended that respondent 3 has seized the said bags of PVC from the despatch section before despatch. Obviously, they would not bear the requisite stamps. From this, a conclusion cannot be drawn that the PVC bags which are despatched do not conform to the standard prescribed under the Standards Act and the said Rules. The learned counsel contended that the respondents' action of seizing the said PVC bags from the despatch section before despatch is malafide. The learned counsel pointed out that significantly this factual averment made in the petition is not denied in the affidavit in reply filed by the respondents.

7. The learned counsel drew our attention to Rule 29 of the said Rules, which refers to wholesale packages and Rule 30 of the said Rules, which refers to packaged commodities meant for export. He submitted that the PVC manufactured by the petitioners would be covered by the said provisions. The learned counsel took us to Chapter 2 of the said Rules. He pointed out that this Chapter contains provisions applicable to packages intended for retail sale. He submitted that it is the petitioners' case that the PVC manufactured and sold by the petitioners is not meant for retail sale. He submitted that therefore, the provisions of Rule 6 and Rule 9, which fall in Chapter 2 would

not be applicable to it. The learned counsel contended that in the circumstances, the seizure memo issued by the respondents and the warning notice issued pursuant thereto and the action taken by the respondents of seizing the commodities of the petitioners need to be quashed.

8. We have also heard Mr. Sonpal, the learned A.G.P., appearing for the State. He took us to the affidavit in reply filed by Mr. S.N. Kulkarni, the Assistant Controller of Legal Metrology, Maharashtra State in response to the petition. The learned A.G.P. contended that the action of seizure is perfectly justified and no interference is necessary with it.

9. Before we deal with the contentions of the petitioners, it is necessary to have a look at the Standards Act, the Enforcement Act and the said Rules. The Standards Act seeks to establish the standards of weights and measures, to regulate inter-State trade or commerce in weights, measures and other goods which are sold or distributed by weight, measure or number and to provide for matters connected therewith or incidental thereto. The Enforcement Act provides for the enforcement of the standards of weights and measures established by or under the Standards Act and for matters connected therewith or incidental thereto.

10. The memo of seizure, which is served on the petitioners states that the petitioners are guilty of contravention of the provisions of section 33 of the Enforcement Act. The petitioners are also said to have contravened Rules 6

(1)(d), 6(1)(f) and 9(1)(a) of the said Rules. It is, therefore, necessary to have a look at section 33 of the Enforcement Act. It reads thus:

> "33. Provisions of the Standards Act and the rules made thereunder relating to commodities in packaged form to apply to commodities in packaged form sold or distributed within the State. - (1) The provisions of the Standards Act and the rules made thereunder, as in force immediately before the commencement of this Act, with regard to commodities in packaged form shall, as far as may be, apply to every commodity in packaged form which is distributed, sold, or kept, offered or exposed for sale, in the State as if the provisions aforesaid were enacted by, or made under, this Act subject to the modification that any reference therein to the "Central Government", "Standards Act" and the "Director" shall be construed as references respectively, to the "State Government", "this Act" and the "Controller".
>
> (2) The State Government may make rules, not inconsistent with the Standards Act or any rule made thereunder, to regulate the packaging of any commodity intended to be sold or distributed, within the State in packaged form, or to regulate the sale or distribution, within the State, of any commodity in packaged form.
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> Explanation. - For the purposes of this section, "commodity in packaged form" shall have the meaning assigned to it in the Standards Act and shall include a pre-packed commodity."

11. It is pertinent to note that as per section 33, for every commodity in packaged form which is distributed, sold or kept, offered or exposed for sale in the State, the provisions of the Standards Act and the Rules made thereunder are applicable. As per the explanation to this section, for the meaning of the

term “commodity in packaged form”, we have to refer to the meaning assigned to it in the Standards Act. Section 2(b) of the Standards Act defines the term “commodity in packaged form” as under :

> 2. Definitions.- In this Act, unless the context otherwise requires, -
>
> (a) x x x
>
> (b) “commodity in packaged form” means commodity packaged, whether in any bottle, tin, wrapper or otherwise, in units suitable for sale, whether wholesale or retail.

There can hardly be any dispute about the fact that the packages seized from the petitioners' despatch section are commodities in packaged form.

12. The said Rules are made in exercise of powers conferred by section 83 of the Standards Act. Chapter II thereof makes provisions for packages intended for retail sale. Rule 6 thereof states what declarations are to be made on such packages. It begins by saying that every package shall bear thereon or on a label affixed thereto a definite, plain and conspicuous declaration. This rule then states what particulars should be stated on the packages or the labels. It is necessary to refer to Rules 6(1)(d) and (f) as the petitioners are said to have contravened the said provisions. The said provisions read thus:

> 6. Declaration to be made on every package. - (1) Every package shall bear thereon or on a label securely affixed thereto a definite, plain and conspicuous declaration, made in accordance with the provisions of this Chapter as, to, -
>
> (a) x x x
>
> (b) x x x
>
> (c) x x x
>
> (d) the month and year in which the commodity is manufactured or pre-packed :
>
> [Provided that for packages containing food articles, the provisions of the Prevention of Food Adulteration Act, 1954 (37 of 1954) and the rules made thereunder shall apply.]
>
> (f) the sale price of the package".

13. Rule 9 of Chapter II of the said Rules states the manner in which declaration has to be made. Contravention of Rule 9(1)(a) is alleged against the petitioners. It reads thus:

> "9. Manner in which declaration shall be made. - (1) Every declaration which is required to be made on a package under these rules shall be -
>
> (a) legible, prominent, definite, plain and unambiguous."

14. Admittedly, packaged commodities seized from the petitioners' despatch section did not conform to about provisions of the said Rules. We have already quoted section 33 of the Enforcement Act, which makes the

provisions of the Standards Act and the said Rules applicable to packaged commodities sold or distributed in the State. Therefore, section 51 of the Enforcement Act gets attracted to the petitioners' case. Section 51 reads thus:

> 51. Penalty for contravention of section 33. (1) Whoever manufactures, distributes, packs, sells or keeps for sale or offers or exposes for sale, or has in his possession for sale, any commodity in packaged form, shall, unless each such package conforms to the provisions of the Standards Act and the rules made thereunder, read with section 33, be punished with fine which may extend to five thousand rupees, and, for the second or subsequent offence, with imprisonment for a term which may extend to five years and also with fine.

15. All the provisions quoted by us make it clear that the requirement of law is that the packaged commodities should bear clear and unambiguous declaration containing particulars such as the name and address of the manufacturer, the month and year in which the commodity is manufactured, the sale price, etc. In this connection, it is necessary to have a look at the Statement of Objects and Reasons of the Standards Act. It indicates that the Standards Act is, inter alia, intended to offer consumer protection in respect of packaged commodities by providing, in pursuance of the recommendations of the International Organization of Legal Metrology (for short, OIML), for the proper indication on the package of net quantity by weight, measures or number, the identity of the commodity contained therein, name of the

manufacturer and what is very important, the price of the package. It further clarifies that it is also proposed that commodities commonly used by people should be packed in rationalised standard quantities by weight, measure or number, so as to facilitate the purchase and comparison of price by the people and indication of date of manufacture and date of expiry would also be marked for appropriate products. From the Statement of Objects and Reasons, it appears that the main features of the Standards Act, inter alia, are the regulation of inter-State trade and commerce in commodities sold, supplied or distributed in packaged form and control and regulation of export and import of weights and measures and commodities in packaged form. What the Standards Act seeks to do is to inter alia ensure protection of consumers by offering them properly packed commodities bearing the necessary information which the intending purchaser must have before he purchases them. The provisions which we have noted hereinabove will have to be read in the light of the above object of the Standards Act and if they are so read and applied to the facts of the present case, in our opinion, the action taken by the respondents cannot be described as illegal. The packaged commodities appear to be intended for retail sale and they did not have the necessary declarations on them. Undoubtedly, there is a violation of the said Rules read with section 33 of the Enforcement Act attracting section 51 of the Enforcement Act.

16. There is no dispute about the fact that the packaged commodities were seized from the despatch section. There is no dispute about the fact that the

packaged commodities did not have any declaration that either they were meant for export or that they were meant for retail sale or that they were meant for industrial use. The submission of the learned counsel for the petitioners that they were seized before despatch and as such in the nature of things, there could not have been any labels or markings on the packaged commodities, is totally unacceptable to us. What is sought to be conveyed is that the petitioners were not aware as to whether a particular packet will be sold to an industrial user or whether it will be exported out of India and, therefore, there were no marks or labels on them. It is pertinent to note that Rule 1(3) of the said Rules says that the said Rules shall apply to commodities in the packaged form, which are, or are intended or likely to be sold, distributed or delivered or offered or displayed for sale, distribution or delivery or stored for sale or for distribution or delivery. If such huge quantity is found in despatch section necessarily it is meant for sale. Assuming that the packaged commodities were meant for export or industrial use or for wholesale, the petitioners are still bound to make necessary declarations thereon. Our attention was drawn to Rule 29 of the said Rules, which provides for declaration to be made on every wholesale package. This Rule requires that every wholesale package shall bear thereon a legible, definite, plain and conspicuous declaration as to the name and address of the manufacturer or where the manufacturer is not the packer, of the packer; the identity of the commodity contained in the package; and the total number of retail packages contained in such wholesale package or the net quantity in terms of standard units of weights, measures or number of the commodity

contained in wholesale package. Rule 30 to which our attention was drawn provides for declaration on packages intended for export. This provision also requires that every export package shall, notwithstanding anything contained in Rule 6 bear on its principal display panel, a legible and conspicuous declaration with regard to the matters viz. whether it is intended for export; the identity of the commodity contained in the export package and the net weight, measure or number of such commodity and the name and address of the manufacturer, and where the manufacturer is not the packer, of the packer. It is, therefore, clear that whether the packaged commodity is meant for wholesale or for export, the requirement of an unambiguous declaration on the packet is a must. Admittedly, none of the packages seized by respondent 3 contained any declaration or any label fixed on them. The learned counsel for the petitioners also contended that under Rule 34 of the said Rules, the petitioners commodities are exempted. A bare look at Rule 34 of the said Rules makes it evident that even in case of exempted commodities, the marking on the package must unambiguously communicate that it has been specially packed for the exclusive use of any industry as a raw material or for the purpose of servicing any industry, mine or quarry. It is not even the petitioners' case that there was any such marking on the packaged commodities. Hence, the claim that the petitioners' goods are exempted or that they were meant for export or wholesale does not appear to be genuine and assuming it to be true it does not help him at all. We, therefore, find no infirmity in the action of the respondents. Petition is rejected.

[SMT. RANJANA DESAI, J.]

[A.P. DESHPANDE, J.]